

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROY STEVE DAVIS,

Petitioner,

v.

CIVIL ACTION NO. 1:07CV13
(Judge Keeley)

JOE DRIVER,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

I. BACKGROUND

On January 30, 2007, Roy Steve Davis ("Davis"), the *pro se* petitioner, filed an Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 in that he asserts seven different grounds for relief. The motion was referred to United States Magistrate Judge James E. Seibert for initial review. On March 14, 2007, the Magistrate Judge entered a Report and Recommendations ("R&R") recommending that six of Davis' claims be dismissed without prejudice because they are not claims that can be asserted in a § 2241 motion. The R&R also recommended that the seventh ground of Davis' motion, the alleged improper calculation of his sentence, be served upon the Respondent and that the Respondent be directed to show cause why the writ should not be granted as to that ground.

On October 24, 2007, this Court entered an order adopting the R&R. On April 22, 2008, the Magistrate Judge entered another R&R

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recommending that this Court dismiss the petition with prejudice but dismiss the motion to show cause and temporary restraining order without prejudice. On May 5, 2008, Davis filed objections to the R&R.

This Court reviews any objections to the Report and Recommendation de novo but may adopt any parts of the R&R not objected to without detailed review. Davis' failure to object to the recommendation on an issue results in the waiver of his appellate rights on that issue.

II. ANALYSIS

Reviewing the statutory and case law de novo, the Court finds that the Magistrate Judge properly applied the controlling legal standard from 18 U.S.C. § 924(c) in determining that Davis's sentence and good time credits were correctly calculated by the Bureau of Prisons. He also properly applied the controlling legal standard from Preiser v. Rodriguez, 411 U.S. 475, 484 (1973), to determine that the issues raised in Davis' motion for an order to show cause and a temporary restraining order are civil rights claims that cannot be asserted in a § 2241 motion. Davis would need to file a civil rights complaint in order to assert those claims.

Consequently, this Court **ADOPTS** Magistrate Judge Seibert's Report and Recommendation in its entirety (dkt. no. 21), **DISMISSES**

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the petition **WITH PREJUDICE** (dkt. no. 1), and **DISMISSES** the motion for an order to show cause and temporary restraining order **WITHOUT PREJUDICE** (dkt. no. 12).

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the petitioner.

Dated: June 24, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE